

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGELIO MAY RUIZ,
Plaintiff,

v.

A. SHEARER, et al.,
Defendants.

No. 2:20-cv-2078 TLN DB P

ORDER

Plaintiff is a state prisoner who was proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Judgment was entered and this action was closed on July 6, 2021. (ECF Nos. 24, 25.) Presently before the court is plaintiff's motion to appoint counsel. (ECF No. 26.)

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

The test for exceptional circumstances requires the court to evaluate the plaintiff's likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not

1 establish exceptional circumstances that would warrant a request for voluntary assistance of
2 counsel.

3 In the present case, the court does not find the required exceptional circumstances. This
4 action was dismissed after plaintiff failed to pay the filing fee. Thus, the circumstances do not
5 warrant the appointment of counsel.

6 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of
7 counsel (ECF No. 26) is denied. Plaintiff is advised that no orders will issue in response to future
8 filings.

9 Dated: September 13, 2021

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12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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19 DB:12
20 DB:1/Orders/Prisoner/Civil.Rights/ruiz2078.31(5)
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